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August 4, 2021

MEMORANDUM ENDORSEMENT

Via ECF

Honorable Kevin Nathaniel Fox
United States Magistrate Judge
Southern District of New York
40 Foley Square
New York, NY 10007

**Re: *Malloy v. U.S. Department of State, et al.*, No. 19 Civ. 6533 (PGG) (KNF);
Malloy v. Pompeo, No. 18 Civ. 4756 (PGG) (KNF)**

Dear Judge Fox:

Pursuant to your Honor's Individual Rule of Practice 1.A, I write on behalf of Plaintiff in the above-referenced consolidated actions to respectfully request that this Court order that Plaintiff may depose Ms. Suzanne Lawrence before September 2, 2021, the current deadline for fact discovery.

On July 20, 2021, Defendants filed a letter motion with the Court "request[ing] an extension of ... fact discovery from August 2, 2021, to September 2, 2021." ECF No. 74 at 1. The stated reason for Defendants' request was to accommodate purported "significant difficulties" that Mr. Harry Ting has encountered in "obtaining his complete medical records" to support Defendants' anticipated motion for a protective order, and to accommodate Mr. Ting's "consider[ation] of retaining counsel in connection with this matter." *Id.* Despite the fact that Defendants provided Plaintiff with no explanation of the supposed difficulties in obtaining Mr. Ting's records or for the lengthy delay in Mr. Ting's consideration of retaining counsel in connection with a deposition of which he and Defendants have been aware for many months, Plaintiff consented to Defendants' requested extension. On July 21, 2021, this Court granted Defendants' motion. ECF No. 80.

On July 23, 2021, Plaintiff served a Rule 45 subpoena and deposition notice for Ms. Lawrence's testimony on August 25, 2021—well before the September 2, 2021 deadline for fact discovery. Ex. A. However, Defendants' counsel on August 2, 2021 stated that Defendants "are not prepared to proceed with any further depositions absent court order," because "[t]he application made to the court, and the one granted by Judge

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Fox, expressly sought an extension solely for the purpose of any deposition of Mr. Ting.”
Id.

Plaintiff did not understand Defendants to have requested Plaintiff’s consent that the deadline for fact discovery be extended only with respect to a single deposition (which Defendants continue to delay via an as-yet-unfiled motion for protective order), and expire with respect to all other fact discovery. Plaintiff likewise did not understand the plain language of Defendants’ letter motion to request such relief, or the Court to have granted such a request.

Defendants’ counsel has consented to an “extension” of what Defendants consider to be the expired deadline for completion of fact discovery other than discovery concerning Mr. Ting, “solely for the purpose of taking Ms. Lawrence’s deposition.” Ex. A. Accordingly, while Defendants apparently do not have any substantive objection to Ms. Lawrence’s deposition, given Defendants’ position that they will not produce Ms. Lawrence for the subpoenaed deposition absent an Order of this Court, Plaintiff requests that this Court (1) order that Ms. Lawrence’s deposition is permitted before the current September 2, 2021 fact discovery deadline, or (2) if the Court shares Defendants’ understanding of the current deadlines, grant an extension of the deadline for the completion of Ms. Lawrence’s deposition to September 2, 2021.

Plaintiff respectfully submits that such an order is appropriate to ensure that Plaintiff may obtain the testimony of Ms. Lawrence, a Department of State employee who was involved in drafting the formal request for Plaintiff’s termination from her position at the U.S. Mission to the United Nations, and whose testimony is therefore likely to include information that is highly relevant to Plaintiff’s claims.

To the extent the Court determines that this is an extension request, this is Plaintiff’s fifth request for extensions of the deadline for the completion of fact discovery. Plaintiff’s other such requests were granted by the Court on March 5, 2021, April 19, 2021, May 19, 2021, and June 21, 2021, respectively. As noted, Defendants consent to Plaintiff’s requested extension (if such an extension is necessary).

Respectfully submitted,

s/ David A. Coon
David A. Coon
Selendy & Gay PLLC

s/ Michael Duke
Michael Duke
Selendy & Gay PLLC

Encl: Ex. A: Email from Jennifer Simon to Sophie Lipman (August 3, 2021).

Cc: All counsel of record (via ECF).

8/18/21

The plaintiff may depose Suzanne Lawrence prior to September 2, 2021.

SO ORDERED:

Kevin Nathaniel Fox

Kevin Nathaniel Fox, U.S.M.J.